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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,869	01/14/2004	Richard J. Denatale	2300.0000600 AUS920031013U	3402
46290	7590	11/17/2008		EXAMINER
WILLIAMS, MORGAN & AMERSON 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042				NGUYEN, QUYNH H
			ART UNIT	PAPER NUMBER
			2614	
			MAIL DATE	DELIVERY MODE
			11/17/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/756,869	Applicant(s) DENATALE, RICHARD J.
	Examiner QUYNH H. NGUYEN	Art Unit 2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 11 August 2008.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 21 and 23-28 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 21 and 23-28 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-166/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____

5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

2. Claims 21 and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al. (U.S. 20050033571).

As to claim 21, Huang et al. teaches a method for interface with an electronic device (Fig. 1; [0024], [0026]) comprising: receiving a sensed signal ([0008] - *where Huang discussed generating speech detection signal based on the speech sensor signal* and [0024], [0026] - *implementing the invention of speech sensory with electronic devices*), at an electronic device (Fig. 1; [0024], [0026]), based on sensing a physical movement of a user indicative of oral communication using a sensor (*speech sensor*) located proximate to the user's temporomandibular joint (see abstract; [0008] - [0011], [0022], [0042]), wherein the sensed signal is indicative of an initiation of an oral communication ([0008] - [0011], [0022]) and wherein the electronic device has voice recognition software stored therein ([0066] - *where Huang discussed electronic devices perform computing functions and speech recognition, hence voice recognition software stored in the electronic device*); and generating an indication thereof (paragraphs [0008] - [0011], [0022]); and an interface through which the sensor can provide the indication to the electronic device thereof (paragraphs [0024], [0026], [0031]); speech detector

generates the speech detection signal is provided to a speech recognition engine based on receiving the sensed signal ([0008] - [0009]). Huang further teaches that managing electronic devices, knowing whether user is speaking or wishes to speak from the speech sensor signal, the resources required to perform speech recognition can be allocated in a much more efficient manner ([0066] - [0067]). Hence, it would have been obvious that the most efficient manner to activate the speech recognition is in response to knowing user wishes to speak from the sensed signal.

Huang does not explicitly teach receiving and processing the oral communication subsequent to activating the voice recognition software.

It would have been obvious to one of ordinary skill in the art at the time the invention was made that, again, the most efficient manner after activating the speech recognition is in response to knowing user wishes to speak from the sensed signal is to receive and process the oral communication, and that is the whole purpose of activating the voice recognition software.

As to claim 23, Huang et al. teaches initiating an oral communication with the electronic device ([0031]).

As to claim 24, Huang et al. teaches means for positioning the sensor to sense the physical movement (paragraph [0011]).

As to claim 25, Huang et al. teaches sensing the electrical activity of the musculature effecting the physical movement ([0008], [0011]).

As to claim 26, Huang et al. teaches indicating to the electronic device includes generating an electrical signal ([0031]).

As to claim 27, Huang et al. teaches indicating to the electronic device includes conditioning the electrical signal (Fig. 1; [0032] - [0033] - where Huang discussed networking environments that include other networks intranets and the Internet; establishing communications link between computers; hence it is necessary to condition the signal for compatibility with the input/output protocol employed by different computers and different networks).

Claim 28 is rejected for the same reasons as discussed above with respect to claim 21 with the exception that claim 28 does not recite voice recognition software. Furthermore, Huang teaches electronic device includes a variety of computer readable storage media ([0027] - [0029]); in one embodiment, calculating probability that the user is speaking based on signals from a variety of transducers ([0043]); and detecting speech using variance computed for the input signals and compared to the histogram values to determine whether a current frame represents that the speaker is speaking or not speaking. It would have been obvious to one of ordinary skill in the art at the time the invention was made in order to maintain histogram values, received oral communication or current frame represents that user is speaking need to be recorded.

Response to Arguments

3. Applicant's arguments with respect to claims 21 and 23-28 have been considered but are moot in view of the new ground(s) of rejection. Applicant's arguments are addressed in the above claims rejections.

Claims 21 and 23-28 recite are method claims. In order for a method to be considered a “process” under 101, a claimed process must either (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-788 (1876)). If neither of these requirements is met by the claims, the method is not a patent eligible process under 101 and is non-statutory subject matter, as is the case of Claim 1. Thus, to qualify as a statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example, by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example, by identifying the material that is being changed to a different state. Failure to make appropriate correction would lead to 101 rejections.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to QUYNH H. NGUYEN whose telephone number is 571-272-7489. The examiner can normally be reached on Monday - Thursday from 6:30 A.M. to 5:00 P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 571-272-7488. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Quynh H Nguyen/
Primary Examiner, Art Unit 2614